1986

Don Harman v. United Television, Inc. a Delaware corporation dba KTVX TV; Phil Riesen, individually and as and employee of KTVX TV; and John Harrington, individualy and as an employee of KTVX TV; and Does I thorugh X : Brief of Appellant

Utah Supreme Court

Donald J. Purser; Roe, Fowler & Moxley; attorney for respondents.
David O. Black; Biele, Haslam & Hatch; attorneys for appellant.

IN THE SUPREME COURT OF THE STATE OF UTAH

860149-CA

DON HARMAN,

Plaintiff-Appellant,

vs.

UNITED TELEVISION, INC. a Delaware corporation dba KTVX TV; PHIL RIESEN, individually and as an employee of KTVX TV; and JOHN HARRINGTON, individually and as an employee of KTVX TV; and DOES I through X,

Defendants-Respondents.

Case No. 20852

860149-CA

APPEAL OF A JUDGMENT FROM THE
DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
SALT LAKE COUNTY, STATE OF UTAH

HONORABLE KENNETH RIGTRUP, JUDGE

****

BRIEF OF APPELLANT

****

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IN THE SUPREME COURT OF THE STATE OF UTAH

DON HARMAN, Plaintiff-Appellant, vs. UNITED TELEVISION, INC. a Delaware corporation dba KTVX TV; PHIL RIESEN, individually and as an employee of KTVX TV; and JOHN HARRINGTON, individually and as an employee of KTVX TV; and DOES I through X, Defendants-Respondents.	:	Case No. 20852

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STATEMENT OF ISSUES PRESENTED ON APPEAL

The issues presented on appeal consist of the following: 1) Whether the Respondent's statements during its television broadcast that the Appellant was involved in a possible cover-up of criminal activities during a County Attorney's Office criminal investigation constituted slander *per se* as alleging Appellant had committed a crime or that his conduct was incompatible with the exercise of a lawful business, trade, profession, or office and was therefore actionable; 2) whether the trial judge acted properly in making his determination that if a statement is capable of at least two different interpretations, then, as a matter of law, the Respondent's statements could not be slanderous *per se*, or whether it was an issue of fact more properly left to the jury.

DISPOSITION IN LOWER COURT

The Third Judicial District Court, the Honorable Kenneth Rigtrup presiding, granted Summary Judgment in favor of Respondents. The trial court held that where allegedly defamatory words in a television broadcast are capable of two different interpretations, one interpretation applying to the Appellant's personal reputation and the other to his professional reputation, a public official could not sue for either libel or slander *per se*.

STATEMENT OF FACTS

The Appellant, Don Harman ("Appellant"), is Chief Investigator for the Salt Lake County Attorney's Office and has been so employed for the last fifteen years (Complaint, paragraphs 1-2). He has had the confidence of his employer and has been of good reputation in the community and among

his colleagues and peers in the law enforcement community (Complaint, paragraph 3). The Appellant's reputation as an honest and outstanding police officer/investigator is essential to his ability to perform his employment to the standards set by his employment (Complaint, paragraph 4).

On November 8, 1984, at approximately 10:00 p.m., during one of the Respondent, KTVX's news broadcasts, the Respondent, Phil Riesen, an employee of KTVX, stated "the news comes mid the allegations that a recent Salt Lake County Attorney's investigation on the same subject may entail a cover-up" (Complaint, paragraph 9). Then the Respondent, John Harrington, an employee of KTVX, narrated a television broadcast displaying a picture of the Appellant stating:

"Don Harman is the chief investigator for the Salt Lake County Attorney's Office. As such he supervised the corruption probe of the County Constable operation. As part of that, he investigated a car sale that took place at this West Valley City car lot. At least one Constable called that sale illegal. Don Harman participated in the sale, putting him in the position of investigating himself. Here is what happened:

> West Valley City Constable, Scott Stowers picked up an $8,000 car on a court order. Stowers was the focus of the County's probe. Salt Lake County Constable, Lynn Huffman says the sale was kept secret so insiders had a chance to get the car cheap. Harman bid low. The vehicle ended up going for $3,200. This report is the fruit of the County Attorney's Constable corruption and investigation. Even though the probe uncovered wrong doing, it fell short of criminal charges. In an interview today, County Attorney Ted Cannon said he was personally investigating Harman's investigation in the car sale. We asked Cannon if Harman's actions may have dampened Harman's zeal to pursue the corruption probe further. Said Cannon 'I can't say that isn't so.' Now that the Attorney General's office and the Salt Lake City Police Department are both investigating the corruption of the Constable system, and now that the County Attorney's investigation has been reopened, Law Enforce-

ment officials are saying privately they expect criminal charges to be filed and that those charges may even extend in the State Department of Social Services."

(Complaint, paragraph 12).

The communicated information about the Appellant's alleged cover-up and improper involvement in the Corruption probe was false, malicious, defamatory and made in reckless disregard of the facts (Complaint, paragraph 15). On November 9, 1984, the Appellant contacted the Respondent, KTVX, by telephone and told the Respondent about the inaccuracy of the their November 8, 1984 broadcast concerning the Appellant; despite this conversation the Respondent again aired the above information on its newscast of November 9, 1984 (Complaint, paragraph 22). Respondents' broadcasts were heard and seen throughout Utah and the Intermountain West by thousands of viewers; as a result, the Appellant was exposed to public hatred, contempt and ridicule and injured his reputation in his profession and in his community (Complaint, paragraphs 14 and 16).

SUMMARY OF ARGUMENT

In point I of this Brief, the Appellant contends that, in light of recent Utah Supreme Courts decisions, the Respondents' statements and allegations made about the Appellant constituted slander per se and are actionable; these statements are actionable in that they impute criminal conduct to the Appellant and that his conduct was incompatible with the exercise of lawful business, trade, profession, or office.

In point II of this Brief, Appellant contends that if the Respondents' statements about the Appellant were capable of at least two different meanings, one of which is defamatory the other innocent, then it would be proper to submit the issue to the jury to determine the manner in

which it was actually understood. This approach should be applied separately to each issue: that of imputation of criminal conduct to Appellant and to conduct incompatible with the exercise of a lawful business.

ARGUMENT

Point I

RESPONDENTS' BROADCAST STATEMENTS CONCERNING APPELLANT CONSTITUTED SLANDER PER SE

A. The Respondents' statements that the Appellant was involved in a cover-up imputed criminal conduct to the Appellant and was therefore slander per se.

In the case of Baum v. Gillman, 667 p.2d 41 (Utah 1983), the Utah Supreme Court faced a situation in which the allegedly defamatory statements about the Appellant had been made orally. There the court defined defamation per se as follows:

> "In order to constitute defamation per se, the defamatory words must charge criminal conduct, loathsome disease, conduct that is incompatible with the exercise of a lawful business, trade, profession, or office, or the unchastity of a woman."

Id. at 43.

The facts of the instant case clearly support the allegation that defendants charged plaintiff with criminal conduct. The Respondents' broadcast stated:

> The news comes mid allegations that a recent Salt Lake County Attorney's investigation on the same subject may entail a cover-up. John Harrington has more on the developments in this report."

After making that introductory allegation, the broadcast went on to state that the Appellant was the chief investigator of the County Attorney's Office; that he supervised the corruption probe; that he had a

motive to cover up the criminal investigation; that his zeal to pursue the corruption probe may have been dampened and that there may be criminal charges filed.

These facts as alleged impute criminal conduct by the Appellant and clearly fall within prior Utah case law. The test of "whether defamatory words are actionable per se is to be determined by their injurious character. The words must be of such common notoriety that damage can be presumed from the words alone," Baum, 667 P.2d at 43, and the words are to be construed according to their usual popular and common acceptance. Western States Title Insurance Co. v. Warnock, 18 Utah 2d 70, 415 P.2d 316, 318 (1966). The purpose of such a requirement is to create a presumption that the Appellant has suffered pecuniary damage without the necessity of pleading and proving special damages; thus, the court can legally presume that the Appellant has been damaged. Nicholls v. Daily Reporter Co., 30 Utah 74, 83 p. 573 (1905). The effect of this requirement is that where there is no slander per se, i.e., oral defamation falling within at least one of the four arbitrary categories, and no libel per se, i.e., written defamation that holds a person up to hatred, ridicule of contempt, damages are not presumed from the words alone, but must be specifically plead and proved.

In the present case, the defendants alleged that the Appellant was involved in a cover-up of a Salt Lake County Attorney's Office criminal investigation. These words must be construed according to their "usual popular and common acceptance." Perhaps such words would not have denoted criminal conduct twenty, thirty or forty years ago, but that is not the test. The test is whether such words, construed according to their usual

popular and common acceptance, would denote criminal conduct in contemporary society. In the past decade the term cover-up has been prominent in the media. A former United States Attorney General was sentenced to prison for his part in the "cover-up" of "Watergate". Because of that and other media exposure, the term "cover-up" has taken on a meaning synonymous with criminal conduct. According to the above cited case law, the Respondents' statements do indeed allege criminal conduct by the Appellant and therefore are actionable. It is not necessary to allege further that the Appellant has suffered any special damage; the damage is presumed from the injurious character of the criminal allegation.

This conclusion is supported by the Utah Supreme Court's decision in Prince v. Peterson, 538 P.2d 1325 (1975). In that case the Respondent had made several written and oral statements that the Appellant was a drunk, a "clever crook" and that he was "stealing from his own children..." referring to his operation of a business, and his efforts to sell it. Id at 327-328. The court noted that general statements about another being a "crook" might not be actionable, but that it depended on the circumstances of each case. Id. The court continued:

> If words of that character are used in such a context or under such circumstances as they would reasonably be understood to come within the traditional requirement of libel or slander: that is, to hold a person up to hatred, contempt or ridicule, or to injure him in his business or vocation, they are deemed actionable per se; and the law presumes that damages will be suffered therefrom."

Id. (Even though not explicitly stated, this seems to be Utah's standard for what is commonly referred to as a crime of "moral turpitude" which is a standard to determine which crimes should be actionable per se. The

Appellant maintains that his fact situation falls within that standard. See 50 Am Jur 2d §28, p.540 (1970) (the words must charge a crime involving moral turpitude, or a criminal or disgraceful charge; the words must state or imply a discreditable or disgraceful thing, some wrongdoing, some circumstance which will expose the complaining party to contempt or scorn).

Under the circumstances of that case, the Supreme Court expressed no doubt that the Defendant's statements (the statements referring to the Appellant being a clever crook, etc.) could reasonably be regarded as falling within the rule of law just stated. Id.

From the foregoing, it is clear that the present case would also be "reasonably regarded as falling within the same rule of law" making the Respondents' statements about the Appellant actionable per se. The Respondent stated that the Appellant was involved in a cover-up of a criminal investigation (when looking at the broadcast in its entirety). This allegation makes an even more persuasive case for the argument that the Respondents' remarks were actionable per se. The allegation of a cover-up of a criminal investigation is more serious and potentially injurious than a statement that the Appellant is a "clever crook" and "stealing from his children" which has been held to be actionable per se by this court. Therefore, the trial court was in error in concluding that the Respondents' statements about the Appellant were not, as a matter of law, actionable per se.

The Respondent argued in the court below that Allred v. Cook, 590 P.2d 318 (Utah 1979), is dispositive of the instant case; but, Allred is clearly distinguishable. In Allred, the Respondents stated that they had 27 charges against the Appellant. The court held that the term "charges"

could have implied conduct attributable to his individual character and therefore was not actionable because slander per se must relate to the Appellant's professional reputation, not his personal reputation; since the charges were capable of two interpretations they were not actionable per se. Id at 321.

Under the present facts, that argument is not applicable. The Appellant maintains that the Respondents' statements concerning him imputed criminal conduct. An allegation of criminal conduct is one of the four arbitrary categories under slander per se in which an Appellant can recover without an allegation of special damages. Baum v. Gillam, 667 P.2d 41 (Utah 1983). There is nothing in the case law that indicates that the four categories are overlapping, i.e., that in order to constitute slander per se under a charge of criminal conduct, it is necessary to prove conduct incompatible with the exercise of a lawful business, trade, profession, or office as well as criminal conduct. On the contrary, these categories represent four separate and distinct concepts that are disjunctive in their relationship to one another. Thus, in the present case, it is irrelevant whether the criminal conduct charged could be interpreted as applying to either the Appellant's personal or professional reputation. When the Appellant has successfully argued that Respondents' broadcast alleged criminal conduct by the Appellant (in accordance with the Utah case law cited supra), then he has satisfied the requirements of slander per se and general damages are presumed.

The logical conclusion is that since it is irrelevant whether the charges of criminal conduct apply to the Appellant's personal or professional reputation, it is not capable of two interpretations in the same

manner as Allred and therefore Allred is not dispositive of the present case. (See Point II for in depth discussion).

B. Respondents' statements that the Appellant was involved in the cover-up of a criminal investigation charges conduct incompatible with the exercise of a lawful business, trade, profession, or office and is slanderous per se.

The rules that apply to conduct incompatible with the exercise of a lawful business and the construction of allegedly defamatory language are the same as those cited in the previous section. See Baum v. Gillam, 667 P.2d 41 (Utah 1983); Western States Title Insurance Co. v. Warnock, 18 Utah 2d 70, 415 P.2d 316, 318 (Utah 1966) (Words construed are to be construed according to their usual popular and common acceptance).

The Appellant is chief investigator for the Salt Lake County Attorney's Office as well as a peace officer and he headed a Salt Lake County Attorney's Office corruption probe. The facts of the present case show that the Respondents alleged that the Appellant was involved in the cover-up of a Salt Lake County Attorney's Office criminal investigation into corruption in county government. It seems obvious that if the Appellant were in fact involved in such a cover-up (the Appellant was not involved in any such cover-up), then his actions would be in direct conflict and indeed incompatible with the purpose of the investigation. Had the Appellant been so involved, his acts would have rendered him criminally liable pursuant to Utah Code Ann. §76-8-201, Official Misconduct; §76-8-301, Interfering with Public Servants; §76-8-306, Obstructing Justice; §76-8-412, Abuse of Public Records by Custodian; §76-8-508, Witness Tampering; §76-8-510, Evidence Tampering. It would be difficult to

imagine a stronger case of an allegation of conduct incompatible with the exercise of a lawful profession.

The Appellant's professional reputation is his reputation among his colleagues in the law enforcement community. The allegation that the Appellant covered up a criminal investigation is a serious blow to his credibility among his colleagues and his ability to function effectively as a law enforcement officer. The Second Restatements of Torts §559, comment b, treats this in the following way:

> "In the application of this idea [defamatory communication] it is enough that the communication would tend to prejudice the Appellant in the eyes of a substantial and respectable minority, but in such a case it must be shown that the communication did reach one or more persons of that minority group. This would normally be presumed, if the communication was a public one which was made in the newspaper or over radio or television. [Emphasis added]

PROSSER AND KEETON, PROSSER AND KEETON ON TORTS §111 at 774 (5th ed. 1984). Not only would those in the law enforcement community understand such a cover-up in its common and popular acceptance, but they would also realize that it would be a violation of the above-mentioned Code sections. Therefore, under the applicable principles of slander per se and specifically conduct incompatible with the exercise of a lawful profession, the Respondents' allegations of a cover-up is actionable per se.

Again, the Allred case is distinguishable from the present case where the court held that since the 27 "charges" could have applied to either the Appellant's personal or professional reputation, that it was capable of two different interpretations and therefore, not actionable per se. This court was correct in its determination because there is no way

for the person hearing the allegations of "charges" to know whether they applied to a personal or professional reputation. The present fact situation is clearly distinguishable. The allegation of conduct incompatible with the exercise of a lawful profession is the cover-up of the criminal investigation of which the Respondent was the head. It is not reasonable to think that the cover-up of a criminal investigation could in some way apply to the Appellant's personal reputation when the broadcast specifically referred to his conduct in an investigation and further referred to his professional title. This specific reference to the Appellant's professional conduct was missing in Allred making it inapplicable to the present case.

POINT II

IF RESPONDENTS' CHARGES AGAINST APPELLANT ARE CAPABLE OF TWO DIFFERENT INTERPRETATIONS, IT IS A QUESTION FOR THE JURY TO DETERMINE WHETHER THE DEFAMATORY INTERPRETATION WAS IN FACT SO UNDERSTOOD.

A. If the Respondents' charges against the Appellant that he was involved in the cover-up of a criminal investigation are ambiguous or capable of two different meanings, then it is a question of fact to be decided by the jury.

There seems to be no disagreement as to the proper role the court and jury play in determining what is capable of being defamatory and actionable per se. The general rule is that it is first for the court to determine whether the words are reasonably capable of a particular defamatory meaning; it is then a question for the jury to determine whether the words were so understood. Fairbanks Publishing Co. v. Pitka, 376 P.2d 190, 194 (Alaska 1962); Tilton v. Cowles Publishing Co., 459 P.2d 8,17-18 (Wash 1969); Troutman v. Erlandson, 593 P.2d 793, 796 (Or.1979); Weeks v. M-P

Publications, Inc., 516 P.2d 193, 195 (Idaho 1973); RESTATEMENT (THIRD) TORTS, §614; PROSSER AND KEETON, at 781. The Washington Supreme Court stated that a determination as to whether defamation is reasonably capable of being actionable per se should be submitted to the jury in "all but extreme cases." Amsbury v. Cowles Publishing Co., 458 P.2d 882, 885-886 (Wash 1969).

The allegation that the Appellant was involved in the cover-up of a criminal investigation is slander per se. This is true whether the allegations fall within charges of criminal conduct or conduct incompatible with the exercise of a lawful profession. Therefore, since the Respondents' defamatory statements are reasonably capable of being slanderous per se, the issue should have been submitted to the jury to determine whether they were actually so understood.

Furthermore, when language used is capable of two different interpretations, one of which would be defamatory and the other not, then it is for the jury to determine which interpretation would be given the words by those who read or heard them. Pitka, supra; PROSSER AND KEETON, supra at 781.

In the present case, if it is determined that the Respondents' statements are capable of two different interpretations (although it is not clear what the innocent or non-defamatory interpretation would be), that alone should not preclude the issue from going to the jury to determine whether the Respondents' statements concerning the Appellant , in order to constitute defamation per se, the words alone on their face must give rise to a presumption of damages. However, it does not follow that the interpretation of such words must be made by the court in order to be actionable

per se. Conversely, all the case authority requiring that a slander per se determination can and ought to be made by the jury in the most situations. See Pitka, Cowles Publishing Co., Weeks v. M-F Publications, Inc., Troutman, Supra. When a factual issue of defamation per se is to be decided by the jury, the jurors should make their determination from the words alone, as they appear on their face, as would a court in its initial determination. No extrinsic facts are necessary to decide the per se issue as would be the case in libel per quod. See Allred v. Cook, 590 P.2d 318 (Utah 1979).

This conclusion is entirely consistent with Allred. In Allred, the Appellant's theory was obviously one of slander per se, more specifically arguing that the Respondents' statements that they had 27 "charges" against him imputed conduct incompatible with the exercise of a lawful business, trade, profession, or office. Allred at 320. However, in that case, the Appellant did not claim that his reputation had been damaged under the separate slander per se category of a charge of criminal conduct. Therefore, in order for the Appellant to recover in that case, he had to show that the words "charges" applied only to his professional reputation--not his personal reputation. The reason for this was that the Appellant was only alleging damage to his professional reputation under that specific category of slander per se.

The Supreme Court held that the words "27 charges against you" were too general to infer criminal conduct by the Appellant and rejected the Appellant's argument that it would be conduct incompatible with his profession and thus actionable per se. Since the allegedly defamatory words in Allred were too general, they could apply to both the Appellant's

personal and professional reputation and they would thus be capable of two different interpretations: one applying to the Appellant's professional reputation (which could be potentially actionable per se), the other applying to his personal reputation (which is not actionable per se under this specific category). If the Appellant in Allred had alleged that his personal reputation had been damaged under the separate slander per se category of a charge of criminal conduct, then there would not have been the problem with the charge applying to the Appellant's personal reputation; because a charge of criminal conduct under the slander per se category can apply to both personal and professional reputation.

Under the present facts, the Appellant is alleging that the Respondents charged him with both criminal conduct and conduct incompatible with the exercise of a lawful profession. Since criminal conduct is actionable per se if it relates to either the Respondents' personal or professional reputation, the problem of two different interpretations in Allred poses no obstacle to the Respondents' case.

The holding in Allred is a narrow one. It stands for the proposition that conduct incompatible with a lawful business, trade, profession, or office must refer to the Respondents' professional reputation in order to be actionable per se and to give rise to a presumption of damages. If such conduct could apply to a personal reputation, then it would be capable of two different interpretations vis a vis the slander per se standard of conduct and could not be actionable at all. That concept is substantially different than the concept Appellant is presenting here.

In the present case, if the language of the entire newscast alleging a cover-up of a criminal investigation is such that it is capable

of two different interpretations, the persuasive case authority requires the issue be submitted to the jury. It does not dictate, (contrary to those who misconstrue Allred), that such an issue be decided as a matter of law by the trial court.

CONCLUSION

The Respondents'statements concerning the Appellant are defamatory and actionable per se. They allege that the Appellant had engaged in criminal conduct and conduct incompatible with the exercise of a lawful business, trade, profession, or office and is therefore sufficient to be actionable per se without any proof of special damages. This determination can be made from the words alone as recited in the Respondents' broadcasts without any recourse to extrinsic facts to render it defamatory.

The Respondents' statements are clearly capable of a defamatory and slanderous meaning as per se. However, the issue created here is a factual one to be determined by a jury. It is for the jury to determine whether the words, once determined capable of a defamatory meaning, were in fact so understood. The issue of whether the Respondents' broadcast was capable of a defamatory meaning has been clearly established and it was error by the trial court not to have allowed the issue to be submitted to the jury for a determination.

The Respondents' statements cannot reasonably be seen as capable of two different interpretations, one defamatory and the other innocent. In any event, the general rule is that in such cases the issue should be submitted to the jury to determine which interpretation was in fact understood. The principle applied in Allred is separate from this general rule; it has narrow application where conduct incompatible with a lawful

business or profession can be interpreted as applying to personal reputation rendering the language non-actionable. The present case does not fall within that narrow rule and should therefore be allowed to be tried at the trial court for a resolution of the factual issues.

The Appellant's standing in his profession has been substantially damaged as a result of the Respondents' untrue and unfair news broadcast. To extend this courts ruling in Allred to the instant case where facts plead are substantially different would have the effect of doing away with the cause of action of slander per se in the State of Utah. Appellant submits this court did not intend such a result.

RESPECTFULLY SUBMITTED this 7 day of October, 1985.

BIELE, HASLAM & HATCH

David O. Black,
Attorneys for Appellant

AFFIDAVIT OF MAILING

STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)

David O. Black, being duly sworn, says:

That he is employed in the office of Biele, Haslam & Hatch, attorneys for Plaintiff-Appellant, Don Harman.

That he mailed four (4) true and accurate copies of Appellant's Brief upon the parties to the within described action addressed to:

Donald J. Purser,
Attorney for Defendants-Respondents
520 Boston Building
Salt Lake City, Utah 84111

and by mailing the same with the United States Post Office, first class, postage prepaid, on the 7 day of October, 1985.

David O. Black

SUBSCRIBED AND SWORN to before me this 7th day of October, 1985.

NOTARY PUBLIC
Residing at: Salt Lake County, Ut

My Commission Expires:

6-1-89

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KS-033

DAVID O. BLACK #0346, of
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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

DON HARMAN, Plaintiff, v. UNITED TELEVISION, INC. a Delaware corporation dba KTVX TV; PHIL RIESEN, individually and as an employee of KTVX TV; and JOHN HARRINGTON, individually and as an employee of KTVX TV; and DOES I through X, Defendant,	COMPLAINT Civil No. C84-7528

The Plaintiff, Don Harman hereby complains of the Defendant and for cause of action alleges as follows:

FIRST CAUSE OF ACTION

1. The Plaintiff is an investigator and employed by the Salt Lake County Attorney's Office and has been for the past 15 years.

2. The Plaintiff currently holds the position of Chief Investigator for the Salt Lake County Attorney's Office and is a peace officer.

3. At all times relevant hereto, Plaintiff has had the confidence of his employer and was of good reputation in the community and among his colleagues and peers in the law enforcement community until publication by Defendants of the defamatory remarks set forth below.

4. Plaintiff's reputation as an honest and outstanding police officer-investigator is essential to his ability to perform his employment to the standards set by his employment.

5. The Defendant, Phil Riesen is a resident of Salt Lake County, State of Utah and at all times relevant hereto was employed as a newscaster by the Defendant United Television, Inc.

6. The Defendant, John Harrington is a resident of Salt Lake County, State of Utah and at all times relevant and hereto was employed as a newscaster by the Defendant, United Television, Inc.

7. The Defendant, United Television, Inc. owns and operates a television broadcasting station having the call letters KTVX.

8. The Defendant, United Television, Inc. the Delaware corporation doing business as KTVX TV (hereinafter referred to as "KTVX") broadcasting its programs at approximately 5:30 o'clock and 10:00 p.m. weekdays and said programs are viewed and heard by a large audience throughout the state of Utah and the intermountain west.

9. During the Defendant, KTVX's news broadcast on or about November 8, 1984, at 10:00 p.m. the Defendant Phil Riesen, an employee of KTVX stated "the news comes amid the allegations that a recent Salt Lake County Attorney's investigation on the same subject may entail a cover up."

10. The Defendant's broadcast was heard throughout Utah and the intermountain west by many thousands of viewers.

11. The Defendants broadcast about the Plaintiff placed Plaintiff in a false light and portrayed Plaintiff as being involved in a cover up. It attributed dishonest actions to the Plaintiff all of which is defamatory and made in wanton and reckless disregard the facts and the Plaintiff's reputation in the community.

12. On Defendant KTVX's news shows on or about November 8, 1984 at about 10:00 p.m. and or about November 9, 1984 the Defendant, John Harrington, an employee of KTVX narrated a television broadcast displaying a picture of the Plaintiff stating

> "Don Harman is the chief investigator for the Salt Lake County Attorney's Office. As such he supervised the corruption probe of the County Constable operation. As part of that he investigated a car sale that took place at this West Valley City car lot. At least one Constable called that sale illegal. Don Harman participated in the sale, putting him in the position of investigating himself. Here is what happened:
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> West Valley City Constable, Scott Stowers picked up an $8,000 car on a court order. Stowers was the focus of the County's Probe. Salt Lake County Constable, Lynn Huffman says the sale was kept secret so insiders had a chance to get the car cheap. Harman bid low. The vehicle ended up going for $3,200. This report is the fruit of the County Attorney's Constable corruption and investigation. Even though the probe uncovered wrong doing, it fell short of criminal charges. In an interview today, County Attorney Ted Cannon said he was personally investigating Harman's investigation in the car sale. We asked Cannon if Harman's actions may have dampened Harman's zeal to pursue the corruption probe further. Said Cannon "I can't say that isn't so". Now that the Attorney's General Office and the Salt Lake City Police Department are both investigating the corruption of the Constable system, and now that

the County Attorney's investigation has been reopened, Law Enforcement officials are saying privately they expect criminal charges to be filed and that those charges may even extend in the State Department of Social Services.

14. Defendants broadcast was heard throughout Utah and the intermountain West and by many thousands of viewers.

15. Defendants broadcasts about Plaintiff were false, malicious, defamatory and made in reckless disregard the facts.

16. Defendants broadcast exposed Plaintiff to public hatred, contempt ridicule and injured him in his profession and in his community.

17. Defendants broadcast containing the false libelous and defamatory information complained of herein has caused the Plaintiff to suffer great mental anguish, pain, suffering and humiliation to which Plaintiff is entitled to recover damages against the Defendant and each of them in the sum of $25,000.

18. Defendants broadcast containing false libelous and defamatory information complained of herein, has damaged his reputation in the amount of $50,000.

19. Defendants broadcast was malicious or made in wanton and reckless disregard of the facts for which Plaintiff should be awarded punitive damages in the sum of $100,000.

SECOND CAUSE OF ACTION

20. Plaintiff incorporates paragraphs 1 through 19 of his first cause of action and realleges the same herein.

21. The context of the broadcast by the Defendants about the Plaintiff implied that Plaintiff was, and his acts violated the law.

Viewers understood the broadcast to mean that Plaintiff was dishonest and was engaged in illegal activities.

22. On November 9, 1984 at about 4:00 p.m. Plaintiff contacted Defendant KTVX by telephone and told the Defendant about the inaccuracy of the above referenced broadcast during November 8, 1984 and as a result of those conversations, Defendant KTVX again aired the broadcast after receiving said information on its newscast on November 9, 1984.

23. Plaintiff has demanded a retraction and apology pursuant to 45-2-1.5 Utah Code Ann. (1953, as amended) and Defendant has failed to comply.

24. On or about November 20, 1984, the Plaintiff contacted the Defendant KTVX and requested that the Defendant produce the video tape of the November 9, 1984 5:30 p.m. newscast which the Defendant refused to do in violation of Section 45-1-5 Utah Code Ann. (1953, as amended).

25. Defendants broadcast containing the false libelous and defamatory information complained of herein has caused the Plaintiff to suffer great mental anguish, pain, suffering and humiliation to which Plaintiff is entitled to recover damages against the Defendant and each of them in the sum of $25,000.

26. Defendants broadcast containing false libelous and defamatory information complained of herein has damaged his reputation in the amount of $50,000.

27. Defendants broadcast was malicious or made in wanton and reckless disregard of the facts for which Plaintiff should be awarded punitive damages in the sum of $100,000.

WHEREFORE, Plaintiff prays for judgment against the Defendant, jointly and severely as follows:

1. $25,000 for mental and physical suffering for the Defendants broadcast on November 8, 1984.

2. $50,000 for damage to his reputation for the Defendants broadcast on November 8, 1984.

3. $100,000 for punitive damages for the Defendants broadcast on November 8, 1984.

4. $25,000 for mental and physical suffering for the Defendants broadcast on November 9, 1984.

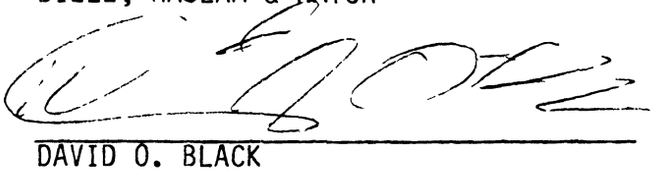
5. $50,000 for damaged to his reputation for the Defendants broadcast on November 9, 1984.

6. $100,000 for punitive damages for the Defendants broadcast on November 9, 1984.

7. For such other and further relief as this court deems proper in the premises.

DATED this 20 day of December, 1984.

BIELE, HASLAM & HATCH



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IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

DON HARMAN,	)	ORDER
Plaintiff,	)	Civil No. C84-7528
-vs-	)	Judge Kenneth Rigtrup
UNITED TELEVISION, INC., et al.,	)	
Defendants.	)	

On July 15, 1985, defendants (KTVX-TV) moved this Court for an Order granting them Summary Judgment in their favor.

KTVX-TV was represented by Donald J. Purser, Esq. Plaintiff was represented by David Black, Esq.

The Court having reviewed the Memoranda filed by counsel and having heard oral arguments thereon, finds as follows.

The broadcasts which form the bases for plaintiff's causes of action do not give rise to a cognizable claim for defamation per se. Plaintiff failed to plead special damages and therefore, he cannot even maintain an action for defamation per quod.

Accordingly, the allegations filed by plaintiff against the defendants are ORDERED to be DISMISSED, with prejudice and on the

merits inasmuch as plaintiff has no cause of action, costs to the defendant.

IT IS SO ORDERED.

July 23, 1985.

BY THE COURT:

Kenneth Rigtrup

KENNETH RIGTRUP

ATTEST:
H. DIXON HINDLEY
CLERK

By _____
Deputy Clerk

76-8-109. Failure of member of legislature to disclose interest in measure or bill.—Every member of the legislature who has a personal or private interest in any measure or bill proposed or pending before the legislature of which he is a member and does not disclose the fact to the house of which he is a member and votes thereon is guilty of a class B misdemeanor.

History: C. 1953, 76-8-109, enacted by L. 1973, ch. 196, § 76-8-109.

Part 2

Abuse of Office

76-8-201. Official misconduct—Unauthorized acts or failure of duty.—A public servant is guilty of a class B misdemeanor if, with an intent to benefit himself or another or to harm another, he knowingly commits an unauthorized act which purports to be an act of his office, or knowingly refrains from performing a duty imposed on him by law or clearly inherent in the nature of his office.

History: C. 1953, 76-8-201, enacted by L. 1973, ch. 196, § 76-8-201.

Cross-References.

Penalty for receiving illegal fees, 21-7-13 to 21-7-15.

Collateral References.

Officers⇐121.

67 C.J.S. Officers § 133.

63 Am. Jur. 2d 837, Public Officers and Employees § 346.

76-8-202. Official misconduct—Unlawful acts based on "inside" information.—A public servant is guilty of a class B misdemeanor if, knowing that official action is contemplated or in reliance on information which he has acquired by virtue of his office or from another public servant, which information has not been made public, he:

(1) Acquires or divests himself of a pecuniary interest in any property, transaction, or enterprise which may be affected by such action or information; or

(2) Speculates or wagers on the basis of such action or information; or

(3) Knowingly aids another to do any of the foregoing.

History: C. 1953, 76-8-202, enacted by L. 1973, ch. 196, § 76-8-202.

Collateral References.

Officers⇐121.

67 C.J.S. Officers § 133.

63 Am. Jur. 2d 837, Public Officers and Employees § 346.

76-8-203. Unofficial misconduct.—(1) A person is guilty of unofficial misconduct if he exercises or attempts to exercise any of the functions of a public office when:

(a) He has not taken and filed the required oath of office; or

(b) He has failed to execute and file the required bond; or

(c) He has not been elected or appointed to office; or

(d) He exercises any of the functions of his office after his term has expired and the successor has been elected or appointed and has qualified, or after his office has been legally removed.

(e) He knowingly withholds or retains from his successor in office or other person entitled to the official seal or any records, papers, documents, or other writings appertaining or belonging to his office or mutilates or destroys or takes away the same.

(2) Unofficial misconduct is a class B misdemeanor.

History: C. 1953, 76-8-203, enacted by L. 1973, ch. 196, § 76-8-203.

Collateral References.

Officers⇨121.
67 C.J.S. Officers § 133.
63 Am. Jur. 2d 837, Public Officers and Employees § 346.

Constitutionality of statute requiring, or limiting, selection or appointment of public officers or agents from members of a political party or parties, 170 A. L. R. 198.
Time as of which eligibility or ineligibility to office is to be determined, 143 A. L. R. 1026.

DECISIONS UNDER FORMER LAW

Mandamus of de facto officers.

Mandamus could issue against de facto drainage district officers who had not made oath and filed bond required by statute to compel them to perform duties they had already voluntarily assumed to do. Colorado Development Co. v. Creer, 96 U. 1, 80 P. 2d 914.

Part 3

Obstructing Governmental Operations

76-8-301. Interference with public servant.—A person is guilty of a class B misdemeanor if he uses force, violence, intimidation, or engages in any other unlawful act with a purpose to interfere with a public servant performing or purporting to perform an official function.

History: C. 1953, 76-8-301, enacted by L. 1973, ch. 196, § 76-8-301.

Collateral References.

Obstructing Justice⇨2.
67 C.J.S. Obstructing Justice § 1.

58 Am. Jur. 2d 862, Obstructing Justice § 10.

Criminal liability for obstructing process as affected by invalidity or irregularity of the process, 10 A. L. R. 3d 1146.

DECISIONS UNDER FORMER LAW

Elements of offense.

To make out offense it must have appeared that (a) duly constituted public officer, (b) engaged in performance of official duty, (c) had been obstructed or resisted by defendant. State v. Sandman, 4 U. (2d) 69, 286 P. 2d 1060.

University security officer who arrested student in area where sole interests of university were location of fraternity and religious institute for students was not discharging, or attempting to discharge, any duty of his office, and subsequent interference with arrest by fellow student was not resistance or obstruction of officer in discharge of duty. State in Interest of Hurley, 28 U. (2d) 248, 501 P. 2d 111.

Employer who refused to bring employee out of factory so that deputy sheriff could serve her with small claims court order was not obstructing officer in performing his duty where employer had no objections to service during various work breaks, including coffee, but not during working hours, since particular manufacturing process became dangerous if work were impeded. State v. Ludlow, 28 U. (2d) 434, 503 P. 2d 1210.

Game wardens.

Game wardens were by law peace officers who had same power and followed same procedure in making arrests as other peace officers. State v. Sandman, 4 U. (2d) 69, 286 P. 2d 1060.

Defendant's refusal to permit game warden to inspect his bait and subsequent disposal of bait amounted to obstruction or resistance of officer in performance of his duty; since game warden had identified himself after his suspicions had been aroused, his request to see bait was not unreasonable and was consistent with his duty. State v. Sandman, 4 U. (2d) 69, 286 P. 2d 1060.

Indictment or information.

Under indictment of resisting officer in discharge of his duty, specific duty attempted to have been discharged and to which resistance was offered should have been alleged in information, and proof offered must have supported allegations of information. State v. Beckendorf, 79 U. 360, 10 P. 2d 1073.

76-8-302. Picketing or parading in or near court.—A person is guilty of a class B misdemeanor if he pickets or parades in or near a building which houses a court of this state with intent to obstruct access to that court or to affect the outcome of a case pending before that court.

History: C. 1953, 76-8-302, enacted by L. 1973, ch. 196, § 76-8-302.

Collateral References.

Obstructing Justice⇐6.

67 C.J.S. Obstructing Justice § 7.

58 Am. Jur. 2d 856, Obstructing Justice § 3.

Picketing of court or judge as contempt, 58 A. L. R. 3d 1297.

76-8-303. Prevention of legislature or public servants from meeting or organizing.—A person is guilty of a felony of the third degree if he intentionally and by force or fraud:

(1) Prevents the legislature, or either of the houses composing it, or any of the members thereof, from meeting or organizing; or

(2) Prevents any other public servant from meeting or organizing to perform a lawful governmental function.

History: C. 1953, 76-8-303, enacted by L. 1973, ch. 196, § 76-8-303.

Collateral References.

Disturbance of Public Assemblage⇐1.

27 C.J.S. Disturbance of Public Meetings § 1.

24 Am. Jur. 2d 141, Disturbing Meetings § 1.

76-8-304. Disturbing legislature or official meeting.—(1) A person is guilty of a class B misdemeanor if:

(a) He intentionally disturbs the legislature, or either of the houses composing it, while in session; or

(b) He intentionally commits any disorderly conduct in the immediate view and presence of either house of the legislature, tending to interrupt its proceedings or impair the respect of its authority; or

(c) Intentionally disturbs an official meeting or commits any disorderly conduct in immediate view and presence of participants in an official meeting tending to interrupt its proceedings.

(2) "Official meeting," as used in this section, means any lawful meeting of public servants for the purposes of carrying on governmental functions.

History: C. 1953, 76-8-304, enacted by L. 1973, ch. 196, § 76-8-304.

Collateral References.

Disturbance of Public Assemblage⇨1.
27 C.J.S. Disturbance of Public Meetings § 1.
24 Am. Jur. 2d 141, Disturbing Meetings § 1.

Law Reviews.

The King's Peace: Riot Law in Its Historical Perspective, 1971 Utah L. Rev. 240.

76-8-305. Unconstitutional.

Constitutionality.

Section 76-8-305 (L. 1973, ch. 196, § 76-8-305) which made it unlawful to intentionally interfere with recognized law enforcement official seeking to detain interferor or another, regardless of whether there was legal basis for arrest, was unconstitutionally vague. State v. Bradshaw, 541 P. 2d 800.

76-8-306. Obstructing justice.—(1) A person is guilty of an offense if, with intent to hinder, prevent, or delay the discovery, apprehension, prosecution, conviction, or punishment of another for the commission of a crime, he:

(a) Knowing an offense has been committed, conceals it from a magistrate; or

(b) Harbors or conceals the offender; or

(c) Provides the offender a weapon, transportation, disguise, or other means for avoiding discovery or apprehension; or

(d) Warns such offender of impending discovery or apprehension; or

(e) Conceals, destroys, or alters any physical evidence that might aid in the discovery, apprehension, or conviction of such person; or

(f) Obstructs by force, intimidation, or deception anyone from performing an act which might aid in the discovery, apprehension, prosecution or conviction of such person.

(2) An offense under this section is a class B misdemeanor unless the actor knows that the offender committed a capital offense or a felony of the first degree, in which case it is a felony of the second degree.

History: C. 1953, 76-8-306, enacted by L. 1973, ch. 196, § 76-8-306.

Cross-References.

Proceedings of grand jury to be kept secret, 77-19-10.

Conviction of one assisted unnecessary.

Conviction of the offender for a capital offense or first degree felony is not a prerequisite to convicting defendant of a second degree felony for a violation of this section. State v. Bingham, 575 P. 2d 197.

Knowledge of capital offense or first degree felony.

Evidence that defendant heard gunshots and then aided his friend who did the shooting in escaping from the scene was insufficient to establish that defendant knew that a homicide had been committed where there was no direct proof that defendant was at the scene of the shooting or that he was told by his friend what had happened. State v. Bingham, 575 P. 2d 197.

Collateral References.

Obstructing Justice⇨2.
67 C.J.S. Obstructing Justice § 1.
58 Am. Jur. 2d 854, Obstructing Justice § 1.

Dispute over custody as affecting charge of obstructing or resisting arrest, 3 A. L. R. 1290.

What constitutes offense of obstructing or resisting officer, 48 A. L. R. 746.

DECISIONS UNDER FORMER LAW

Elements of offense.

University security officer who arrested student in area where sole interests of university were location of fraternity and religious institute for students was not discharging, or attempting to discharge, any duty of his office, and subsequent interference with arrest by fellow student was not resistance or obstruction of officer in discharge of duty. State in interest of Hurley, 28 U. (2d) 248, 501 P. 2d 111.

Employer who refused to bring employee out of factory so that deputy sheriff could serve her with small claims court order was not obstructing officer in performing his duty where employer had no objections to service during various work breaks, including coffee, but not during working hours, since particular manufacturing process became dangerous if work were impeded. State v. Ludlow, 28 U. (2d) 434, 503 P. 2d 1210.

Game wardens.

Game wardens were by law peace officers who had same power and followed same procedure in making arrests as other peace officers. State v. Sandman, 4 U. (2d) 69, 286 P. 2d 1060.

Defendant's refusal to permit game warden to inspect his bait and subsequent disposal of bait amounted to obstruction or resistance of officer in performance of his duty; since game warden had identified himself after his suspicions had been aroused, his request to see bait was not unreasonable and was consistent with his duty. State v. Sandman, 4 U. (2d) 69, 286 P. 2d 1060.

Scope and operation.

Former statute which prohibited disclosure of grand jury proceedings did not forbid disclosure when required by court, as where grand juror was called to testify before petit jury regarding confession made by defendant when testifying voluntarily before grand jury. United States v. Kirkwood, 5 U. 123, 126, 13 P. 234.

76-8-307. Failure to aid peace officer.—A person is guilty of a class B misdemeanor if, upon command by a peace officer identifiable or identified by him as such, he unreasonably fails or refuses to aid the peace officer in effecting an arrest or in preventing the commission of any offense by another person.

History: C. 1953, 76-8-307, enacted by L. 1973, ch. 196, § 76-8-307.

Cross-References.

Officer may command assistance, 77-5-1.

76-8-308. Acceptance of bribe or bribery to prevent criminal prosecution—Defense.—(1) A person is guilty of a class B misdemeanor if he:

(a) Solicits, accepts, or agrees to accept any benefit as consideration for his refraining from initiating or aiding in a criminal prosecution; or

(b) Confers, offers, or agrees to confer any benefit upon another as consideration for the person refraining from initiating or aiding in a criminal prosecution;

(2) It is an affirmative defense that the value of the benefit did not exceed an amount which the actor believed to be due as restitution or indemnification for the loss caused or to be caused by the offense.

History: C. 1953, 76-8-308, enacted by L. 1973, ch. 196, § 76-8-308.

Cross-References.

Bribery involving tampering with or retaliation against a witness or informant, 76-8-508.

Extortion or bribery to dismiss criminal proceeding, 76-8-509.

Collateral References.

Extortion⇦1.

35 C.J.S. Extortion § 1.

31 Am. Jur. 2d 900, Extortion, Blackmail, and Threats § 1.

Communicating with grand jury or member thereof as a criminal offense, 112 A. L. R. 319.

History: C. 1953, 76-8-409, enacted by L. 1973, ch. 196, § 76-8-409.

Collateral References.
Taxation⇐310.
85 C.J.S. Taxation § 1025.
72 Am. Jur. 2d 59, State and Local Taxation § 727.

76-8-410. Doing business without license.—Every person who commences or carries on any business, trade, profession, or calling, for the transaction or carrying on of which a license is required by any law, or by any county, city, or town ordinance, without taking out the license required by law or ordinance is guilty of a class B misdemeanor.

History: C. 1953, 76-8-410, enacted by L. 1973, ch. 196, § 76-8-410.

Collateral References.
Licenses⇐40.
53 C.J.S. Licenses § 66.
51 Am. Jur. 2d 75, Licenses and Permits § 72.

76-8-411. Trafficking in warrants.—No state, county, city, town, or district officer shall, either directly or indirectly, contract for or purchase any warrant or order issued by the state, county, city, town, or district of which he is an officer, at any discount whatever upon the sum due on the warrant or order, and, if any state, county, city, town, or district officer shall so contract for or purchase any such order or warrant on a discount, he is guilty of a class B misdemeanor.

History: C. 1953, 76-8-411, enacted by L. 1973, ch. 196, § 76-8-411.

Collateral References.
States⇐136.
81 C.J.S. States § 168.
63 Am. Jur. 2d 837, Public Officers and Employees § 346.

76-8-412. Stealing, destroying or mutilating public records by custodian.—Every officer having the custody of any record, map, or book, or of any paper or proceedings of any court, filed or deposited in any public office, or placed in his hands for any purpose, who is guilty of stealing, willfully destroying, mutilating, defacing, altering, falsifying, removing, or secreting the whole or any part thereof, or who permits any other person so to do, is guilty of a felony of the third degree.

History: C. 1953, 76-8-412, enacted by L. 1973, ch. 196, § 76-8-412.

Cross-References.
Forgery, 76-6-501.
Fraudulent handling of recordable writings, 76-6-503.
Tampering with records, 76-6-504.

Collateral References.
Officers⇐121.
67 C.J.S. Officers § 133.
63 Am. Jur. 2d 837, Public Officers and Employees § 346.

DECISIONS UNDER FORMER LAW

Presumptions.

Since it was a felony to falsify court records, it was presumed records of court were correct and that those who had access to them had not falsified them; this presumption extended to juvenile court records. In re State in Interest of Graham, 110 U. 159, 170 P. 2d 172.

76-8-502 (2), falsity of a statement may not be established solely through contradiction by the testimony of a single witness.

(2) No prosecution shall be brought under this part when the substance of the defendant's false statement is his denial of guilt in a previous criminal trial.

History: C. 1953, 76-8-505, enacted by L. 1973, ch. 196, § 76-8-505.

76-8-506. False reports of offenses to law enforcement officer.—A person is guilty of a class B misdemeanor if he:

(1) Knowingly gives or causes to be given false information to any law enforcement officer with a purpose of inducing the officer to believe that another has committed an offense; or

(2) Knowingly gives or causes to be given information to any law enforcement officer concerning the commission of an offense, knowing that the offense did not occur or knowing that he has no information relating to the offense or danger.

History: C. 1953, 76-8-506, enacted by L. 1973, ch. 196, § 76-8-506.

76-8-507. False name or address to law enforcement officer.—A person commits a class C misdemeanor if, with intent of misleading a law enforcement officer as to his identity, he knowingly gives a false name or address to a law enforcement officer in the lawful discharge of his official duties.

History: C. 1953, 76-8-507, enacted by L. 1973, ch. 196, § 76-8-507.

76-8-508. Tampering with witness—Retaliation against witness or informant—Bribery.—A person is guilty of a felony of the third degree if:

(1) Believing that an official proceeding or investigation is pending or about to be instituted, he attempts to induce or otherwise cause a person to:

(a) Testify or inform falsely; or

(b) Withhold any testimony, information, document, or thing; or

(c) Elude legal process summoning him to provide evidence; or

(d) Absent himself from any proceeding or investigation to which he has been summoned; or

(2) He commits any unlawful act in retaliation for anything done by another in his capacity as a witness or informant; or

(3) He solicits, accepts, or agrees to accept any benefit in consideration of his doing any of the things specified in paragraph (1).

History: C. 1953, 76-8-508, enacted by L. 1973, ch. 196, § 76-8-508.

Cross-References.

Accepting bribe, or bribery, to prevent criminal prosecution, 76-8-308.

Collateral References.

Bribery⇐1(1).

11 C.J.S. Bribery § 2.

12 Am. Jur. 2d 749, Bribery § 3.

Admissibility, in prosecution for bribery or accepting bribes, of evidence tending to show the commission of other bribery or acceptance of bribe, 20 A. L. R. 2d 1012.

Falsity of contemplated testimony as condition of offense of bribery of, attempt to bribe, or acceptance of bribe or gift by, prospective witness, 110 A. L. R. 582.

DECISIONS UNDER FORMER LAW

Evidence.

In prosecution for subornation of perjury, record of plea of guilty of perjury by person alleged to have been procured to commit perjury was inadmissible. State v. Justesen, 35 U. 105, 99 P. 456.

In prosecution of attorney for subornation of jury, evidence was sufficient to sustain conviction although only evidence was testimony of person alleged to have been suborned, since perjury and subornation of perjury were distinct offenses and such witness was not accomplice of defendant as to subornation charged. State v. Gleason, 86 U. 26, 40 P. 2d 222.

Where defendant and witness were accomplices in perjury, corroboration of witness's testimony was unnecessary to convict defendant of subornation. State v. McGee, 26 U. (2d) 373, 489 P. 2d 1188.

Status of crime.

Crime of subornation of perjury was separate and distinct offense from that of perjury. State v. Justesen, 35 U. 105, 99 P. 456.

76-8-509. Extortion or bribery to dismiss criminal proceeding.—(1) A person is guilty of a felony of the second degree if by the use of force or by any threat which would constitute a means of committing the crime of theft by extortion under this code, if the threat were employed to obtain property, or by promise of any reward or pecuniary benefits, he attempts to induce an alleged victim of a crime to secure the dismissal of or to prevent the filing of a criminal complaint, indictment, or information.

(2) "Victim," as used in this section, includes a child or other person under the care or custody of a parent or guardian.

History: C. 1953, 76-8-509, enacted by L. 1973, ch. 196, § 76-8-509.

Cross-References.

Accepting bribe, or bribery, to prevent criminal prosecution, 76-8-308.

Collateral References.

Threats⇨1(1).

86 C.J.S. Threats and Unlawful Communications § 4.

31 Am. Jur. 2d 911, Extortion, Blackmail, and Threats § 14.

Criminal liability of corporation for extortion, false pretenses, or similar offenses, 49 A. L. R. 3d 820.

76-8-510. Tampering with evidence.—A person commits a felony of the second degree if, believing that an official proceeding or investigation is pending or about to be instituted, he:

(1) Alters, destroys, conceals, or removes anything with a purpose to impair its verity or availability in the proceeding or investigation; or

(2) Makes, presents, or uses anything which he knows to be false with a purpose to deceive a public servant who is or may be engaged in a proceeding or investigation.

History: C. 1953, 76-8-510, enacted by L. 1973, ch. 196, § 76-8-510.

Collateral References.

Obstructing Justice⇨5.

67 C.J.S. Obstructing Justice § 10.

29 Am. Jur. 2d 338, Evidence § 292.

76-8-511. Falsification or alteration of government record.—A person is guilty of a class B misdemeanor if he: